

REMARKS

A. BACKGROUND

The present Amendment is in response to the Office Action mailed March 24, 2009. Claims 17, 19, 36-44, and 48-59 were pending and rejected in view of cited art.¹ Claims 19, 48, 49 and 51 have been canceled and claims 17, 36, 41, 43, 44 and 50 are amended. Claims 17, 36-44, 50 and 52-59 are now pending in view of the above amendments.²

Reconsideration of the application is respectfully requested in view of the above amendments to the claims and the following remarks. For the Examiner's convenience and reference, Applicant's remarks are presented in the order in which the corresponding issues were raised in the Office Action.

Please note that the following remarks are not intended to be an exhaustive enumeration of the distinctions between any cited references and the claimed invention. Rather, the distinctions identified and discussed below are presented solely by way of example to illustrate some of the differences between the claimed invention and the cited references. In addition, Applicant requests that the Examiner carefully review any references discussed below to ensure that Applicant's understanding and discussion of the references, if any, is consistent with the Examiner's understanding.

B. PRIOR ART REJECTIONS

I. REJECTION UNDER 35 U.S.C. §102

The Office Action rejected claims 17, 19, 37, 39-41, 43-44, and 50 under 35 U.S.C. § 102(b) as being anticipated by PCT Publication No. WO 99/62408 (*Derowe*). Claims 17, 19, 37-44, and 50-59 were rejected under 35 U.S.C. § 102(b) as being anticipated by PCT Publication No. WO 02/45593 (*Ginn*).

The Office Action asserts that *Derowe* discloses "annular shaped body (Figure 9a) defining a plane," (Office Action, Page 2). However, Figure 9 of *Derowe* teaches a vascular port device in which "a plurality of anchors (for threads) 386 are provided, for example holes" (P. 19, ll. 25-26). In direct contrast, the rejected claims specifically recite a device in which "the body compris[es] a plurality of looped elements defining an outer periphery of the body, each looped

¹ Although the prior art status of the cited art is not being challenged at this time, Applicant reserves the right to challenge the prior art status of the cited art at any appropriate time, should the need arise. Accordingly, any arguments and amendments made herein should not be construed as acquiescing to any prior art status of the cited art.

element including a curved outer region connected to a curved inner region, the curved outer region being out of phase with adjacent curved inner regions, adjacently positioned looped elements being connected to form an endless sinusoidal pattern." In view of the above, Applicant respectfully requests that the rejection under 35 U.S.C. § 102(b) be withdrawn.

Claims 17, 19, 37-44, and 50-59 were rejected under 35 U.S.C. § 102(e) as being anticipated by PCT Publication No. WO 02/45593 (*Ginn*). The Applicant notes that the present application is a continuation of Application Serial No. 09/732,178, filed December 7, 2000, (now United States Patent 6,719,777). *Ginn* is a published PCT application that also claims priority to Application Serial No. 09/732,178. Since the present application is a continuation of the application to which *Ginn* claims priority, Applicant respectfully submits that *Ginn* is not a prior art reference under 35 U.S.C. §102(e) relative to the present application.

II. REJECTION UNDER 35 U.S.C. § 103

The Office Action rejected claim 36 under 35 U.S.C. § 103(a) as being unpatentable over *Derowe* in view of U.S. Patent No. 7,169,158 (*Sniffin*). Claims 42 and 57 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Derowe* as applied to claims 41 and 56, and further in view of PCT Publication No. WO 00/56227 (*Loshakove*).

With respect to claim 36, *Sniffin* teaches an "anastomosis instrument and method for performing the same" (Title). "The particular surgical instrument 10 shown in the various figures is preferably designed to deform an array of surgical fasteners similar to fastener 260 shown in FIG. 3 which is generally L-shaped and includes a base leg 264 and an upwardly extending support leg 262" (Col. 6, ll. 60-64). "FIG. 26A shows a schematic diagram of the surgical fastener staple pattern which is formed upon actuation of the instrument described above with respect to FIGS. 1-26" (Col. 26, ll. 50-52). Accordingly, *Sniffin* discloses a pattern formed by an array of L-shaped fasteners 260 when the fasteners 260 are deployed.

The Office Action has not cited any portion of *Sniffin* that discloses "a plurality of arcuate tines extending from the curved inner regions towards the central axis of the generally annular-shaped body in the planar configuration, and generally parallel to the central axis in the transverse configuration." In view of *Sniffin's* failure to teach this, Applicant submits that the Examiner has failed to set forth a *prima facie* case for obviousness and respectfully request that the rejection of claim 36 be withdrawn.

² Support for the claim amendments and/or new claim(s) can be found throughout the specification and/or drawings as originally filed.

With respect to claims 42 and 57, the Office Action has not cited any portion of *Loshakove* that teaches a device in which "the body compris[es] a plurality of looped elements defining an outer periphery of the body, each looped element including a curved outer region connected to a curved inner region, the curved outer region being out of phase with adjacent curved inner regions, adjacently positioned looped elements being connected to form an endless sinusoidal pattern," Applicant submits that the Examiner has failed to set forth a *prima facie* case for obviousness and respectfully request that the rejection of claims 42 and 57 be withdrawn.

C. CONCLUSION

In view of the foregoing, Applicant respectfully submits that the other rejections to the claims are now moot and do not, therefore, need to be addressed individually at this time. It will be appreciated, however, that this should not be construed as Applicant acquiescing to any of the purported teachings or assertions made in the last action regarding the cited art or the pending application, including any official notice. Instead, Applicant reserves the right to challenge any of the purported teachings or assertions made in the last action at any appropriate time in the future, should the need arise. Furthermore, to the extent that the Examiner has relied on any Official Notice, explicitly or implicitly, Applicant specifically requests that the Examiner provide references supporting the teachings officially noticed, as well as provide the required motivation or suggestion to combine references with the other art of record.

For at least the foregoing reasons, Applicant respectfully submits that the pending claims are neither anticipated by nor made obvious by the art of record. In the event that the Examiner finds any remaining impediment to a prompt allowance of this application that may be clarified through a telephone interview, the Examiner is requested to contact the undersigned attorney.

Dated this 24th day of August, 2009.

Respectfully submitted,

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